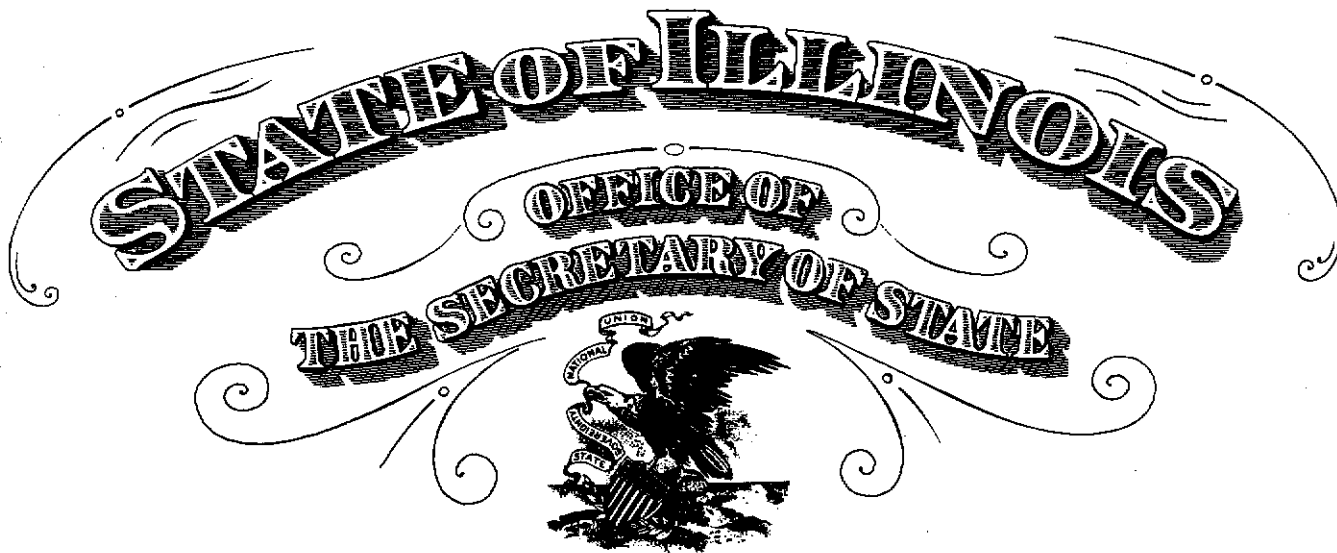


EXHIBIT B

**CERTIFICATE OF FORMATION AND
CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN ILLINOIS**

(see attached)



To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that

CM TEL (USA) LLC,
A DELAWARE LIMITED LIABILITY COMPANY APPEARS TO HAVE
COMPLIED WITH ALL PROVISIONS OF THE LIMITED LIABILITY COMPANY ACT
OF THIS STATE RELATING TO THE FILING OF THE APPLICATION FOR
ADMISSION ON MAY 21, 2003, AND IS REGISTERED TO TRANSACT
BUSINESS IN THE STATE OF ILLINOIS*****



In Testimony Whereof, I, hereto set
my hand and cause to be affixed the Great Seal of
the State of Illinois, this 30TH
day of MAY 2003
A.D. .

Jesse White

SECRETARY OF STATE



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

MAY 21, 2003

0092570-5

ILLINOIS CORPORATION SERV CO
700 SOUTH SECOND STREET
SPRINGFIELD, IL 62704-0000

RE CM TEL (USA) LLC

DEAR SIR OR MADAM:

IT IS OUR PLEASURE TO APPROVE YOUR REQUEST TO TRANSACT BUSINESS IN THE STATE OF ILLINOIS. ENCLOSED PLEASE FIND AN APPROVED APPLICATION OF ADMISSION.

THE LIMITED LIABILITY COMPANY MUST FILE AN ANNUAL REPORT PRIOR TO THE FIRST DAY OF ITS ANNIVERSARY MONTH (MONTH OF QUALIFICATION) NEXT YEAR. A PRE-PRINTED ANNUAL REPORT FORM WILL BE SENT TO THE REGISTERED AGENT AT THE ADDRESS SHOWN ON THE RECORDS OF THIS OFFICE APPROXIMATELY 60 DAYS PRIOR TO ITS ANNIVERSARY MONTH.

SINCERELY YOURS,

A handwritten signature in cursive script that reads "Jesse White".

JESSE WHITE
SECRETARY OF STATE

DEPARTMENT OF BUSINESS SERVICES
LIMITED LIABILITY COMPANY DIVISION
TELEPHONE (217)524-8008

JW:LLC

Form **LLC-45.5**

January 1999

Jesse White

Secretary of State
Department of Business Services
Limited Liability Company Division
Room 359, Howlett Building
Springfield, IL 62756
<http://www.sos.state.il.us>

Payment must be made by certified check, cashier's check, Illinois attorney's C.P.A.'s check or money order, payable to "Secretary of State."

**Illinois
Limited Liability Company Act****Application for Admission to Transact Business****Submit in Duplicate**

Must be typewritten

This space for use by Secretary or State

Date May 21, 2003
Assigned File #
Filing Fee \$400
Penalty \$
Approved: 00925705

This space for use by
Secretary of State**FILED****MAY 21 2003****LIMITED LIABILITY CO. DIV.
JESSE WHITE
SECRETARY OF STATE**

1. Limited Liability Company name: CM Tel (USA) LLC
(Must comply with Section 1-10 of ILLCA or article 2 below applies.)
2. The assumed name, other than the true company name, under which the LLC proposes to transact business in Illinois is: _____
(If applicable, a form LLC-1.20, Application to Adopt an Assumed Name, is required to be completed and attached to this application.)
3. Federal Employer Identification Number (F.E.I.N.): 94-3337847
4. Jurisdiction of Organization: DELAWARE
5. Date of Organization: July 13, 1999
6. Period of Duration: perpetual
(See #14 on back)
7. The address, including county, of the office required to be maintained in the jurisdiction of its organization, or if not required, of the principal place of business (Post office box alone and c/o are unacceptable):

700 Wilshire Blvd., 7th Floor
(Number) (Street) (Suite)

Los Angeles, CA 90017, Los Angeles County
(city/state) (ZIP Code) (County)
8. Registered agent: Illinois Corporation Service Company
(First Name) (Middle Name) (Last Name)

Registered Office: 700 South Second Street
(Number) (Street) (Suite #)

(P.O. Box or c/o are unacceptable) Springfield, Sangamon Illinois 62704
(City) (County) (ZIP Code)
9. The date on which this foreign LLC first did business in Illinois: March 1, 2003

LLC-45.5

10. The purpose or purposes for which the company is organized and proposes to conduct in this State: Include the business code # (IRS Form 1065).
Telecommunications services, and other business activities
11. The limited liability company is managed by:
☒ manager(s)
☐ vested in member(s)
12. The Illinois Secretary of State is hereby appointed the agent of the limited liability company for service of process under the circumstances set forth in a subsection (b) of Section 1-50 of the ILLCA.
13. This application is accompanied by a certificate of good standing or existence, as well as a copy of the articles of organization, as amended, duly authenticated within the last thirty (30) days, by the officer of the state or country wherein the LLC is formed.
14. If the period of duration is a date certain and is not stated in the Articles of Organization from the domestic state, a copy of that page from the Operating Agreement stating the date must also be submitted.
15. The undersigned affirms, under penalties of perjury, having authority to sign hereto, that this application for admission to transact business is to the best of my knowledge and belief, true, correct and complete.

Dated January 21, 2003.
(Month/Day) (Year)

H. Tiejun
(Signature)
(Signature must comply with Section 5-45 of ILLCA)

Hu Tiejun, Manager
(Type or print name and title)

(If applicant is a company or other entity, state name of company
and indicate whether it is a member or manager of the LLC.)

Delaware

PAGE 1

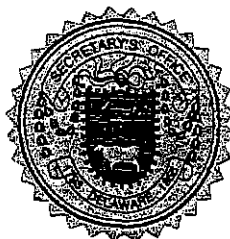
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "CM TEL (USA) LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE THIRTEENTH DAY OF JULY, A.D. 1999, AT 9 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID LIMITED LIABILITY COMPANY.



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3068709 8100H

AUTHENTICATION: 2154428

020778192

DATE: 12-18-02

CERTIFICATE OF FORMATION

OF

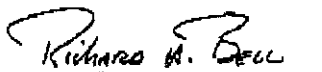
CM Tel (USA) LLC

(A Delaware Limited Liability Company)

First: *The name of the limited liability company is: CM Tel (USA) LLC*

Second: *Its registered office in the State of Delaware is located at 25 Greystone Manor, Lewes, Delaware 19958, County of Sussex. The registered agent in charge thereof is Harvard Business Services, Inc.*

IN WITNESS WHEREOF, I Richard H. Bell, being fully authorized to execute and file this document have signed below and executed this Certificate of Formation on this 13th day of July, 1999.



Richard H. Bell
Authorized Person

**LIMITED LIABILITY COMPANY AGREEMENT
FOR
CM Tel (USA) LLC**

A. THIS LIMITED LIABILITY COMPANY AGREEMENT is entered into as of July 13, 1999 by CM Tel Co. Ltd., (the Member or Members).

B. The Members have formed a limited liability company under the Delaware Limited Liability Company Act. The Certificate of Formation of the Company filed with the Delaware Secretary of State on July 13, 1999 is hereby adopted and approved by the Members.

C. The Members enter into this Agreement to provide for the governance of the Company and the conduct of its business, and to specify their relative rights and obligations.

NOW THEREFORE, the Members agree as follows:

ARTICLE I: DEFINITIONS

Capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in Delaware Code, Title 6 § 18-101, et seq.

1.1. "Act" means the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.) including amendments from time to time.

1.2. "Adjusted Capital Contribution" is defined in Article IV, Section 4.6(a).

1.3. "Adjusted Capital Account Deficit" is defined in Article IV, Section 4.3(a).

1.4. "Affiliate" of a Member means (1) any Person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Member. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through membership, ownership of voting securities, by contract, or otherwise.

1.5. "Agreement" means this limited liability company agreement, as originally executed and as amended from time to time.

1.6. "Assignee" means a person who has acquired a Member's Economic interest in the Company, by way of a Transfer in accordance with the terms of this Agreement, but who has not become a Member.

1.7. "Assigning Member" means a Member who by means of a Transfer has transferred an Economic Interest in the Company to an Assignee.

1.8. "Available Cash" means all net revenues from the Company's operations, including net proceeds from all sales, refinancings, and other dispositions of Company property that the Managers, in the Managers' discretion, deem in excess of the amount reasonably necessary for the operating requirements of the Company, including debt reduction and Reserves.

1.9. "Book Depreciation" is defined in Article IV, Section 4.3(b).

1.10. "Capital Account" means, with respect to any Member, the account reflecting the capital interest of the Member in the Company, consisting of the Member's initial Capital Contribution maintained and adjusted in accordance with Article III, Section 3.3.

1.11. "Capital Contribution" means, with respect to any Member, the amount of the money and the fair market value of any property (other than money) or services contributed to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take "subject to" under IRC section 752) in consideration of a Percentage Interest held by such Member. The fair market value of such property or services contributed to the Company shall be determined by the Managers. A Capital Contribution shall not be deemed a loan.

1.12. "Capital Event" means a sale or disposition of any of the Company's capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of Company property, or a similar event with respect to Company property or assets.

1.13. "Certificate of Formation" is defined in 6 Del. C. § 18-101(2) as applied to this Company.

1.14. "Code" or "IRC" means the Internal Revenue Code of 1936, as amended, and any successor provision.

1.15. "Company" means the company named in Article II, Section 2.2 of this Agreement.

1.16. "Company Minimum Gain" is defined in Article IV, Section 4.3(c).

1.17. - left intentionally blank -

1.18. - left intentionally blank -

1.19. "Economic Interest" means a Person's right to share in the income, gains,

losses, deductions, credit or similar items of, and to receive distributions from, the Company, but does not include any other rights of a Member, including the right to vote or to participate in management.

1.20. "Encumber" means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.21. "Encumbrance" means, with respect to any Membership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

1.22. "Gross Asset Value" means, with respect to any item of property of the Company, the item's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any item of property contributed by a Member to the Company shall be the fair market value of such property, as mutually agreed by the contributing Member and the Company;

(b) — The Gross Asset Value of any item of Company property distributed to any Member shall be the fair market value of such item of property on the date of distribution; and

(c) The Gross Asset Value of any item of Company property shall be subject to the adjustments specified in Article IV, Section 4.11.

1.23. "Initial Members" means those Persons whose names are set forth in the first sentence of this Agreement. A reference to an "Initial Member" means any of the Initial Members.

1.24. "Involuntary Transfer" means, with respect to any Membership Interest, or any element thereof, any Transfer or Encumbrance, whether by operation of law, pursuant to court order, foreclosure of a security interest, execution of a judgment or other legal process, or otherwise, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors.

1.25. "Losses." See Article IV, Section 4.2.

1.26. "Majority of Members" means a Member or Members whose Percentage Interests represent more than 50 percent of the Percentage Interests of all the Members.

1.27. "Manager" or "Managers" means the Persons named as such in Article II or the Persons who from time to time succeed any Person as a Manager and who, in either case, are serving at the relevant time as a Manager.

1.28. "Member" means an Initial Member or a Person who otherwise acquires a Membership Interest, as permitted under this Agreement, and who remains a Member.

1.29. "Member Nonrecourse Debt" is defined in Article IV, Section 4.3(d).

1.30. "Member Nonrecourse Debt Minimum Gain" is defined in Article IV, Section 4.3(e).

1.31. "Member Nonrecourse Deductions" is defined in Article IV, Section 4.3(f).

1.32. "Membership Interest" means a Member's rights in the Company, collectively, including the Member's Economic Interest, any right to Vote or participate in management, and any right to information concerning the business and affairs of the Company.

1.33. "Nonrecourse Deductions" is defined in Article IV, Section 4.3(g).

1.34. "Nonrecourse Liability" is defined in Article IV, Section 4.3(h).

1.35. "Notice" means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when deposited, as certified mail or for overnight delivery, postage and fees prepaid, in the United States mails; when delivered to Federal Express, United Parcel Service, DHL WorldWide Express, or Airborne Express, for overnight delivery, charges prepaid or charged to the sender's account; when personally delivered to the recipient; when transmitted by electronic means, and such transmission is electronically confirmed as having been successfully transmitted; or when delivered to the home or office of a recipient in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient.

1.36. "Percent of the Members" means the specified total of Percentage Interests of all the Members.

1.37. "Percentage Interest" means a fraction, expressed as a percentage, the numerator of which is the total of a Member's Capital Account and the denominator of which is the total of all Capital Accounts of all Members.

1.38. "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

1.39. "Profits" and "Losses" are defined in Article IV, Section 4.2.

1.40. - left intentionally blank -

1.41. "Regulations" ("Reg") means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

1.42. "Reserves" means the aggregate of reserve accounts that the Managers, in the Managers' discretion, deem reasonably necessary to meet accrued or contingent liabilities of the Company, reasonably anticipated operating expenses, and working capital requirements.

1.43. "Successor in Interest" means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.

1.44. "Tax Item" means each item of income, gain, loss, deduction, or credit of the Company.

1.45. "Tax Matters Partner" means such Person as may be designated under Article VI, Section 6.6.

1.46. "Transfer" means, with respect to a Membership Interest or any element of a Membership Interest, any sale, assignment, gift, Involuntary Transfer, Encumbrance, or other disposition of such a Membership Interest or any element of such Membership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

1.47. *- left intentionally blank -*

1.48. "Vote" means a written consent or approval, a ballot cast at a meeting, or a voice vote.

1.49. "Voting Interest" means, with respect to a Member, the right to Vote or participate in management and any right to information concerning the business and affairs of the Company provided under the Act, except as limited by the provisions of this Agreement. A Member's Voting Interest shall be directly proportional to that Member's Percentage Interest.

ARTICLE II: CERTIFICATE OF FORMATION

2.1. The Certificate of Formation was filed with the Delaware Secretary of State on July 13, 1999.

2.2. The name of the Company is CM Tel (USA) LLC.

2.3. *Address of company.* The principal executive office of the Company shall be at such place or places as may be determined by the Managers from time to time.

2.4. *Agent for service of process.* The initial agent for service of process on the Company in the State of California shall be Gordon & Rees, LLP whose address is Embarcadero Center West, Twentieth Floor, 275 Battery Street, San Francisco, California 94111.

The registered office of the Company in the State of Delaware is located at 25 Greystone Manor, Lewes, Sussex County Delaware, 19958-9776, and the name of the registered agent of the Company at such address for service of process in the State of Delaware is Harvard Business Services, Inc.

The Managers may from time to time change the Company's agents for service of process.

2.5. *Limited liability company.* The Members intend the Company to be a limited liability company under the Act, classified as a partnership for federal and, to the maximum extent possible, state income taxes. No Manager nor any Member shall take any action inconsistent with the express intent of the parties to this Agreement.

2.6. *Term of company's existence.* The term of existence of the Company shall commence on the effective date of filing of Certificate of Formation with the Delaware Secretary of State, and shall continue in perpetuity until dissolved by the written consent of the member(s).

2.7. *Initial members.* The name and address of the Initial Member are CM Tel Co. Ltd., 3000 Royal Centre, P.O. Box 11130, 1055 West Georgia Street, Vancouver, B.C. V6E 3R3.

2.8. *Managers.* The names of the Managers are as follows:

Name:

Mr. Hau Tung Ying

Mr. Hu Tiejun

ARTICLE III: CAPITAL AND CAPITAL CONTRIBUTIONS

3.1. Each Member shall contribute to the capital of the Company as the Member's initial Capital Contribution the money and property specified in Exhibit A.

3.2. *Additional capital.* No member shall be required to make any additional Capital Contributions. However, if the Company's revenues are insufficient to pay the Company's expenses, the Members shall have the opportunity, but not the obligation, to contribute additional capital in cash to the Company on a pro rata basis in accordance with their respective Percentage Interests. If, after additional Capital Contributions are made by the Members, the Managers determine that further Capital Contributions are necessary to pay the Company's expenses,

additional Members may be permitted to join the Company on such terms and conditions as may be reasonably determined by the Managers. Each Member shall receive a credit to that Member's Capital Account in the amount of any additional capital which that Member contributes to the Company. Immediately following such Capital Contributions, the Percentage Interests shall be adjusted, and Exhibit A shall be revised, to reflect the new relative proportions of the Members' Capital Accounts.

3.3. *Capital accounts.* An individual Capital Account for each Member shall be maintained in accordance with the requirements of Reg §1.704-1(b)(2)(iv) and adjusted in accordance with the following provisions:

(a) A Member's Capital Account shall be increased by that Member's Capital Contributions, that Member's share of Profits, and any items in the nature of income or gain that are specially allocated to that Member pursuant to Article IV.

(b) A Member's Capital Account shall be increased by the amount of any Company liabilities assumed by that Member subject to and in accordance with the provisions of Reg §1.704-1(b)(2)(iv)(c).

(c) A Member's Capital Account shall be decreased by (a) the amount of cash distributed to that Member; (b) the fair market value of any property of the Company so distributed, net of liabilities secured by such distributed property that the distributes Member is considered to assume or to be subject to under IRC section 752; and © the amount of any items in the nature of expenses or losses that are specially allocated to that Member pursuant to Article IV.

(d) A Member's Capital Account shall be reduced by the Member's share of any expenditures of the Company described in IRC section 705(a)(2)(B) or which are treated as IRC section 705(a)(2)(B) expenditures pursuant to Reg section 1.704-1 (b)(2)(iv)(I) (including syndication expenses and losses nondeductible under IRC sections 267(a)(1) or 707(b)).

(e) If any Economic Interest (or portion thereof) is transferred, the transferee of such Economic Interest or portion shall succeed to the transferor's Capital Account attributable to such interest or portion.

(f) Each Member's Capital Account shall be increased or decreased as necessary to reflect a revaluation of the Company's property assets in accordance with the requirements of Reg sections 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)(iv)(g), including the special rules under Reg section 1.701-1(b)(4), as applicable. The provisions of this Agreement respecting the maintenance of Capital Accounts are intended to comply with Reg section 1.704-1(b) and shall be interpreted and applied in a manner consistent with those Regulations.

3.4. *Withdrawals.* A Member shall not be entitled to withdraw any part of the Member's Capital Contribution or to receive any distributions, whether of money or property, from the Company except as provided in this Agreement.

3.5. *Interest.* No interest shall be paid on Capital Contributions or on the balance of a Member's Capital Account.

3.6. *Limited liability.* A Member shall not be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Company except as otherwise provided in the Act or in this Agreement.

3.7. *No priority of return.* No Member shall have priority over any other Member with respect to the return of a Capital Contribution or distributions or allocations of income, gain, losses, deductions, credits, or items thereof.

ARTICLE IV: ALLOCATIONS AND DISTRIBUTIONS

4.1. The Profits and Losses of the Company and all items of Company income, gain, loss, deduction, or credit shall be allocated, for Company book purposes and for tax purposes, to a Member in accordance with the Member's Percentage Interest.

4.2. As used in this Agreement, "Profits and Losses" means, for each fiscal year or other period specified in this Agreement, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with IRC section 703(a), including all Tax Items required to be stated separately pursuant to IRC section 703(a)(1), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in IRC section 705(a)(2)(B) or treated as IRC section 705(a)(2)(B) expenditures pursuant to Reg section 1.704-1(b)(2)(iv)(I) and not otherwise taken into account in computing Profits or Losses shall be subtracted from such taxable income or shall increase such loss;

(c) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the fair market value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its fair market value;

(d) In lieu of depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Book Depreciation for such fiscal year or other period, computed in accordance with the definition of "Book Depreciation" in Section 4.3(b); and

(e) Notwithstanding the foregoing provisions of this Section 4.2, any items of income, gain, loss, or deduction that are specially allocated shall not be taken into account in computing Profits or Losses under Section 4.1.

4.3. *Definitions relating to special allocations.* The following definitions shall apply with respect to this Article IV.

(a) "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year of the Company, after such Member's Capital Account has been adjusted as follows: (1) the Member's Capital Account shall be increased by the amount of such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain; and (2) the Member's Capital Account shall be decreased by the amount of the items described in Reg sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Reg section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently with that Regulation.

(b) "Book Depreciation" means, with respect to any item of Company property for a given fiscal year, a percentage of depreciation or other cost recovery deduction allowable for federal income tax purposes for such item during that fiscal year equal to the result (expressed as a percentage) obtained by dividing (1) the fair market value of that item at the beginning of the fiscal year (or the acquisition date during the fiscal year), by (2) the federal adjusted tax basis of the item at the beginning of the fiscal year (or the acquisition date during the fiscal year). If the adjusted tax basis of an item is zero, the Managers may determine Book Depreciation, provided that they do so in a reasonable and consistent manner.

(c) "Company Minimum Gain" has the meaning set forth in Reg section 1.704-2(d)(1).

(d) "Member Nonrecourse Debt" is defined in Reg section 1.704-2(b)(4).

(e) "Member Nonrecourse Debt Minimum Gain" for a fiscal year of the Company means the net increase in Minimum Gain attributable to Member Nonrecourse Debt, determined as set forth in Reg section 1.704-2(I)(2).

(f) "Member Nonrecourse Deductions" has the meaning set forth in Reg section 1.704-2(I)(2). For any fiscal year of the Company, the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt equals the net increase during that fiscal year in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt during that fiscal year, reduced (but not below zero) by the amount of any distributions during such year to the Member bearing the economic risk of loss for such Member Nonrecourse Debt if such distributions are both from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, all as determined according to the provisions of Reg section 1.704-2(I)(2). In determining Member Nonrecourse Deductions, the ordering rules of Reg section 1.704-2(j) shall be followed.

(g) "Nonrecourse Deductions" has the meaning set forth in Reg section 1.704-2(c). The amount of Nonrecourse Deductions for a Company fiscal year equals the net increase in the amount of Company Minimum Gain during that fiscal year, reduced (but not below zero) by the aggregate amount of any distributions during that fiscal year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain.

(h) "Nonrecourse Liability" is defined in Reg section 1.752-1(a)(2).

4.4. *Certain special allocations.* The following special allocations shall be made in the following order:

(a) *Company Minimum Gain Chargeback.* If there is a net decrease in Company Minimum Gain during a fiscal year, each Member shall be allocated, before any other allocation under this Section, items of Company income and gain for such fiscal year equal to such Member's share of the net decrease in Company Minimum Gain as determined in accordance with Reg section 1.704-2(g)(2).

(b) *Member Nonrecourse Debt Minimum Gain Chargeback.* If there is a net decrease in Member Nonrecourse Debt Minimum Gain during a fiscal year, any Member with a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt as of the beginning of such fiscal year shall be allocated items of Company income and gain for such year (and, if necessary, subsequent years) equal to that Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain. A Member's share of net decrease in Member Nonrecourse Debt Minimum Gain shall be determined pursuant to Reg section 1.704-2(g)(2). A Member shall not be subject to the foregoing chargeback to the extent permitted under Reg section 1.704-2(i)(4).

(c) *Qualified Income Offset* If any Member unexpectedly receives an adjustment, allocation, or distribution described in Reg sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6), such Member shall be allocated items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income and gain for such fiscal year) in an

amount and manner sufficient to eliminate the Adjusted Capital Account Deficit created by such adjustment, allocation, or distribution.

4.5. *Allocations of member nonrecourse deductions.* Member Nonrecourse Deductions for any fiscal year of the Company shall be allocated to the Members in the same proportion as Profits are allocated under Section 4.1, provided that any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member who bears (or is deemed to bear) the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Reg section 1.704-2(i)(2).

4.6. *Allocation of profits from capital events.* In any fiscal year of the Company, Profits in excess of Losses of the Company resulting from a Capital Event in that Fiscal Year shall be allocated to the Members in the following order:

(a) To Members whose Adjusted Capital Contributions are in excess of their Capital Accounts, in proportion to those excesses, until all of those excesses have been eliminated. "Adjusted Capital Contributions" means, with respect to each Member, the excess of such Member's contribution to the capital of the Company over all prior distributions to the Member that have resulted from Capital Events.

(b) Among the Members in the proportion that the Capital Contribution of each Member bears to the total Capital Contributions of all Members.

4.7. *Allocation of losses from capital events.* In any fiscal year of the Company, Losses in excess of Profits of the Company, resulting from a Capital Event in that fiscal year, shall be allocated to the Members with positive Capital Accounts, in proportion to their positive Capital Account balances, until no Member has a positive Capital Account. For this purpose, Capital Accounts shall be reduced by the adjustments set forth in Reg sections 1.704-1 (b)(2)(ii)(d)(4), (5), and (6).

4.8. *Allocations respecting asset distributions.* Any unrealized appreciation or unrealized depreciation in the values of Company property distributed in kind to Members shall be deemed to be Profits or Losses realized by the Company immediately prior to the distribution of the property and such Profits or Losses shall be allocated to the Capital Accounts in the same proportions as Profits are allocated under Section 4.1. Any property so distributed shall be treated as a distribution to the Members to the extent of the fair market value of the property, less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.8, "unrealized appreciation" or "unrealized depreciation" shall mean the difference between the fair market value of such property and the Company's federal adjusted tax basis for such property.

4.9. *Allocations respecting contributed property.* Any item of income, gain, loss, or deduction with respect to any property (other than cash) that has been contributed by a Member to the capital of the Company, or that has been revalued pursuant to the provisions of Article III, Section 3.3, and that is required or permitted to be allocated to such Member for income tax purposes under IRC section 704(c) in order to take into account the variation between the tax basis of such property and its fair market value at the time of its contribution, shall be allocated solely for income tax purposes in the manner required or permitted under IRC section 704(c) using the "traditional" method described in Reg section 1.704-3(b), except that any other method allowable under applicable Regulations may be used for any contribution of property with respect to which there is agreement among the contributing Member and the Managers (and, if the Managers and the contributing Member are Affiliates, a Majority of Members who are not Affiliates of the Manager).

4.10. *Allocations between assignor and assignee.* In the case of a Transfer of an Economic Interest during any fiscal year of the Company, the Assigning Member and Assignee shall each be allocated Profits or Losses based on the number of days each held the Economic Interest during that fiscal year. If the Assigning Member and Assignee agree to a different proration and advise the Managers of the agreed proration before the date of the Transfer, Profits or Losses from a Capital Event during that fiscal year shall be allocated to the holder of the Interest on the day such Capital Event occurred. If an Assignee makes a subsequent Assignment, said Assignee shall be considered an "Assigning Member" with respect to the subsequent Assignee for purposes of the aforesaid allocations.

4.11. *Revaluation of company assets.* (a) The Gross Asset Value of all Company property shall be adjusted as of the following times: (1) the acquisition of an interest or additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (2) the distribution of money or other property (other than a de minimis amount) by the Company to a Member as consideration for an Economic Interest in the Company, and (3) the liquidation of the Company within the meaning of Reg section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments under clauses (1) and (2) above shall be made only in the event of a revaluation of Company property under Article III, Section 3.3 in accordance with Reg section 1.704-1(b)(2)(iv)(f).

(b) The Gross Asset Value of Company property shall be increased or decreased to reflect adjustments to the adjusted tax basis of such property pursuant to IRC section 732, IRC section 733, or IRC section 743, subject to, the limitations imposed by IRC section 755 and Reg section 1.704-1(b)(2)(iv)(m); and,

(c) If the Gross Asset Value of an item of property has been determined or adjusted pursuant to Article I, Section 22 or Paragraph (a) or (b) of this Section 4.11, such Gross Asset Value shall be adjusted by the Book Depreciation, if any, taken into account with respect to such property for purposes of computing Profits and Losses.

4.12. *Compliance with law and regulations.* It is the intent of the Members that each Member's allocated share of Company Tax Items be determined in accordance with this Agreement to the fullest extent permitted by IRC sections 704(b) and 704(c). Notwithstanding anything to the contrary contained in this Agreement, if the Company is advised that, as a result of the adoption of new or amended regulations pursuant to IRC sections 704(b) and 704(c), or the issuance of authorized interpretations, the allocations provided in this Agreement are unlikely to be respected for federal income tax purposes, the Managers are hereby granted the power to amend the allocation provisions of this Agreement, on advice of accountants and legal counsel, to the minimum extent necessary to cause such allocation provisions to be respected for federal income tax purposes.

4.13. *Available cash from business operations.* All Available Cash, other than revenues or proceeds from a Capital Event or the dissolution of the Company, shall be distributed among the Members in the same manner as Profits. The parties intend that Available Cash shall be distributed as soon as practicable following the Managers' determination that such cash is available for distribution. The parties acknowledge that no assurances can be given with respect to when or whether said cash will be available for distributions to the Members.

4.14. *Available cash from capital events.* All Available Cash resulting from a Capital Event (as distinguished from normal business operations or the dissolution of the Company) shall be distributed to the Members in accordance with their respective Percentage Interests as soon as practicable following the Managers' determination that such cash is available for distribution.

4.15. *Noncash proceeds.* If the proceeds from a sale or other disposition of an item of Company property consist of property other than cash, the value of that property shall be as determined by the Managers. If such noncash proceeds are subsequently reduced to cash, such cash shall be taken into account by the Managers in determining Available Cash and the Managers shall determine whether such cash has resulted from operations or from a Capital Event.

4.16. *Liquidating proceeds.* Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Company, or when any Member's interest is liquidated, all items of income and loss first shall be allocated to the Members' Capital Accounts under this Article IV, and other credits and deductions to the Members' Capital Accounts shall be made before the final distribution is made. The provisions of this Section 4.16 shall be construed in accordance with the requirements of Reg section 1.704-1(b)(2)(ii)(b)(2).

ARTICLE V: MANAGEMENT

5.1. The business of the Company shall be managed by the Managers named in Article II, Section 2.8, or successor Managers selected in the manner provided in Article V, Section 5.2.

Except as otherwise set forth in this Agreement, all decisions concerning the management of the Company's business shall be made by the Managers.

5.2. *Term of Managers.* The Managers shall serve until the earlier of: (1) the Manager's bankruptcy, death or resignation; or (2) the Manager's removal by the Members as provided below. The Managers serve at the will of the Members and may be removed at any time upon the unanimous vote of the Members.

5.3. *Powers and Duties of the Managers.* The Company shall be managed by the Managers, who shall have full power and authority to conduct and manage the business and affairs of the Company. Notwithstanding the foregoing, the Managers shall not take any of the following actions on behalf of the Company unless a Majority of Members has consented to the taking of such action.

- (a) Any act that would make it impossible to carry on the ordinary business of the Company;
- (b) Any confession of a judgment against the Company;
- (c) The dissolution of the Company;
- (d) The disposition of all or a substantial part of the Company's assets not in the ordinary course of business;
- (e) The incurring of any debt not in the ordinary course of business, provided, however, that a mortgage, bridge loan, construction loan or other real estate financing to acquire or develop a real estate project on behalf of the Company shall be deemed to be in the ordinary course of business;
- (f) A change in the nature of the principal business of the Company;
- (g) The filing of a petition in bankruptcy or the entering into of an arrangement among creditors; and
- (h) The entering into, on behalf of the Company, of any transaction constituting a "merger" or "consolidation"
- (i) Any change in the Managers' compensation.

5.4. *Time devoted to the company.* It is acknowledged that the Managers have other business interests to which each Manager devotes part of that Manager's time. The Managers shall devote such time to the conduct of the business of the Company as Managers, in the Managers' own good faith and discretion, deem necessary.

5.5. *Compensation.* The Managers shall be entitled to compensation for the Managers' services as determined from time to time by the Members to reimbursement for all expenses reasonably incurred by the Managers in the performance of the Managers' duties.

5.6. *Officers of the company.* The Managers may appoint a President and Vice President of the Company. The President shall be the chief executive officer of the Company and shall have general supervision of the business and affairs of the Company, shall preside at all meetings of Members and of Managers, and shall have such other powers and duties usually vested in a chief executive officer. The Vice President shall assist the President in the performance of his duties and, in the temporary absence of the President, shall have the power and authority to act on behalf of the President. The Managers may provide for additional officers of the Company, may alter the powers and duties of the President and Vice President, and shall establish the powers and duties of all other officers and the compensation of all Company officers.

5.7. *Title to assets.* The Managers shall cause all assets of the Company, whether real or personal, to be held in the name of the Company.

5.8. *Banking.* All funds of the Company shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Company, at such locations as shall be determined by the Managers. Withdrawal from such accounts shall require only the signature of one of the Managers or such other person or persons as the Managers may designate.

ARTICLE VI: ACCOUNTS AND ACCOUNTING

6.1. Complete books of account of the Company's business, in which each Company transaction shall be fully and accurately entered, shall be kept at the Company's principal executive office and at such other locations as the Managers shall determine from time to time and shall be open to inspection and copying on reasonable Notice by any Member or the Member's authorized representatives during normal business hours. The costs of such inspection and copying shall be borne by the Member.

6.2. *Accounting.* Financial books and records of the Company shall be kept on the accrual method of accounting, which shall be the method of accounting followed by the Company for federal income tax purposes. The financial statements of the Company shall be prepared in accordance with generally accepted accounting principles and shall be appropriate and adequate for the Company's business and for carrying out the provisions of this Agreement. The fiscal year of the Company shall be April 1 through March 31.

6.3. *Records.* At all times during the term of existence of the Company, and beyond that term if the Managers deems it necessary, the Managers shall keep or cause to be kept the books of account referred to in Section 6.2, together with:

- (a) A current list of the full name and last known business or residence address of each Member, together with the Capital Contribution and the share in Profits and Losses of each Member;
- (b) A current list of the full name and business or residence address of each Manager;
- (c) A copy of the Certificate of Formation, as amended;
- (d) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;
- (e) An original executed copy or counterparts of this Agreement, as amended;
- (f) Any powers of attorney under which the Certificate of Formation or any amendments to said Certificate of Formation were executed;
- (g) Financial statements of the Company for the six most recent fiscal years; and
- (h) The books and Records of the Company as they relate to the Company's internal affairs for the current and past four fiscal years.

If the Managers deem that any of the foregoing items shall be kept beyond the term of existence of the Company, the repository of said items shall be as designated by the Managers.

6.4. *Financial statements.* At the end of each fiscal year the books of the Company shall be closed and statements reflecting the financial condition of the Company and its Profits or Losses shall be prepared, and a report thereon shall be issued by the Company's accountants. Copies of the financial statements shall be given to all Members. In addition, all Members shall receive not less frequently than at the end of each calendar quarter, copies of such financial statements regarding the previous calendar quarter, as may be prepared in the ordinary course of business, by the Managers or accountants selected by the Managers. The Managers shall deliver to each Member, within 120 days after the end of the fiscal year of the Company, a financial statement that shall include:

- (a) A balance sheet and income statement, and a statement of changes in the financial position of the Company as of the close of the fiscal year;
- (b) A statement showing the Capital Account of each Member as of the close of the fiscal year and the distributions, if any, made to each Member during the fiscal year.

6.5. *Income tax returns.* Within 90 days after the end of each taxable year of the Company the Managers shall send to each of the Members all information necessary for the

Members to complete their federal and state income tax or information returns and a copy of the Company's federal, state, and local income tax or information returns for such year.

6.6. *Managers as tax matters partners.* The Managers shall act as Tax Matters Partners of the Company pursuant to IRC section 6231(a)(7).

6.7. *Authority to be exercised by tax matters partner.* The Tax Matters Partner is hereby authorized to do the following:

(a) Keep the Members informed of administrative and judicial proceedings for the adjustment of Company items (as defined in IRC section 6231(a)(3)) at the Company level, as required under IRC section 6223(g) and the implementing Regulations;

(b) Enter into settlement agreements under IRC section 6224(c)(3) and applicable Regulations with the Internal Revenue Service or the Secretary of the Treasury (the Secretary) with respect to any tax audit or judicial review, in which agreement the Tax Matters Partner may expressly state that such agreement shall bind the other Members, except that such settlement agreement shall not bind any Member who (within the time prescribed under the Code and Regulations) files a statement with the Secretary providing that the Tax Matters Partner shall not have the authority to enter into a settlement agreement on behalf of such Member;

(c) On receipt of a notice of a final Company administrative adjustment, to file a petition for readjustment of the Company items with the Tax Court, the District Court of the United States for the district in which the Company's principal place of business is located, or the United States Court of Federal Claims, all as contemplated under IRC section 6226(a) and applicable Regulations;

(d) File requests for administrative adjustment of Company items on Company tax returns under IRC section 6227(b) and applicable Regulations; and, to the extent such requests are not allowed in full, file a petition for adjustment with the Tax Court, the District Court of the United States for the district in which the Company's principal place of business is located, or the United States Court of Federal Claims, all as contemplated under IRC section 6228(a); and

(e) To take any other action on behalf of the Members or the Company in connection with any administrative or judicial tax proceeding to the extent permitted by law or regulations, including retaining tax advisers (at the expense of the Company) to whom the Tax Matters Partner may delegate such rights and duties as deemed necessary and appropriate.

ARTICLE VII: MEMBERSHIP-MEETINGS, VOTING, INDEMNITY

7.1. There shall be only one class of membership and no Member shall have any rights or preferences in addition to or different from those possessed by any other Member except as specifically provided for in Article IV. Members shall have the right and power to appoint, remove, and replace the Managers of the Company and the right to Vote on all other matters as provided herein. Each Member shall Vote in proportion to the Member's Percentage Interest as of the governing record date, determined in accordance with Section 7.2. If a Member has assigned all or part of the Member's Economic Interest to a person who has not been admitted as a Member, the Assigning Member shall Vote in proportion to the Percentage Interest that the Assigning Member would have had, if the assignment had not been made.

Without limiting the foregoing, all of the following acts shall require the unanimous Vote of the Members:

- (a) The Transfer of a Membership Interest and the admission of the Assignee as a Member of the Company; and
- (b) Any amendment of the Certificate of Formation or this Agreement.

7.2. *Record dates.* The record date for determining the Members entitled to receive Notice of any meeting, to Vote, to receive any distribution, or to exercise any right in respect of any other lawful action, shall be the date set by the Managers or by a Majority of Members; provided that such record date shall not be more than 60, or less than ten calendar days prior to the date of the meeting and not more than 60 calendar days prior to any other action.

7.3. *Membership certificates.* The Company may, but shall not be required, to issue certificates evidencing Membership Interests (Membership Interest Certificates) to Members of the Company. Once Membership Interest Certificates have been issued, they shall continue to be issued as necessary to reflect current Membership Interests held by Members. All issuances, reissuances, exchanges, and other transactions in Membership Interests involving Members shall be recorded in a permanent ledger as part of the books and records of the Company.

7.4. *Meetings: Call, notice, and quorum.* Meetings of the Members may be called at any time by the Managers, or by Members representing more than 10 percent of the Interests of the Members for the purpose of addressing any matters on which the Members may Vote. If a meeting of the Members is called by the Members, Notice of the call shall be delivered to the Managers. Meetings may be held at the principal executive office of the Company or at such other location or by telephone as may be designated by the Managers. Following the call of a meeting, the Managers shall give Notice of the meeting not less than ten, or more than 60 calendar days prior to the date of the meeting to all Members entitled to Vote at the meeting. The Notice shall state the place, date, and hour of the meeting and the general nature of business

to be transacted. No other business may be transacted at the meeting. A quorum at any meeting of Members shall consist of a Majority of Members, represented in person or by Proxy. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of a sufficient number of Members to leave less than a quorum, if the action taken, other than adjournment, is approved by the requisite Percentage of Members as specified in this Agreement or the Act.

7.5. *Adjournment of meetings.* A meeting of Members at which a quorum is present may be adjourned to another time or place and any business which might have been transacted at the original meeting may be transacted at the adjourned meeting. If a quorum is not present at an original meeting, that meeting may be adjourned by the Vote of a majority of Voting Interests represented either in person or by Proxy. Notice of the adjourned meeting need not be given to Members entitled to Notice if the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken, unless (a) the adjournment is for more than 45 days, or (b) after the adjournment, a new record date is fixed for the adjourned meeting. In the situations described in clauses (a) and (b), Notice of the adjourned meeting shall be given to each Member of record entitled to Vote at the adjourned meeting.

7.6. *Waiver of notice.* The transactions of any meeting of Members, however called and noticed, and wherever held, shall be as valid as though consummated at a meeting duly held after regular call and notice, if (a) a quorum is present at that meeting, either in person or by Proxy, and (b) either before or after the meeting, each of the persons entitled to Vote, not present in person or by Proxy, signs either a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting. Attendance of a Member at a meeting shall constitute waiver of notice, unless that Member objects, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be described in the notice of the meeting and not so included, if the objection is expressly made at the meeting.

7.7. *Proxies.* At all meetings of Members, a Member may Vote in person or by Proxy. Such Proxy shall be filed with the Managers before or at the time of the meeting, and may be filed by facsimile transmission to the Managers at the principal executive office of the Company or such other address as may be given by the Managers to the Members for such purposes.

7.8. *Participation in meetings by conference telephone.* Members may participate in a meeting through use of conference telephone or similar communications equipment, provided that all Members participating in such meeting can hear one another. Such participation shall be deemed attendance at the meeting.

7.9. *Action by members without a meeting.* Any action that may be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by Members having not less than the minimum number of Votes that

would be necessary to authorize or take that action at a meeting at which all Members entitled to Vote thereon were present and voted. If the Members are requested to consent to a matter without a meeting, each Member shall be given notice of the matter to be voted upon in the manner described in Section 7.4. Any action taken without a meeting shall be effective when the required minimum number of Votes have been received. Prompt Notice of the action taken shall be given to all Members who have not consented to the action.

7.10. *No agency; indemnification.* No Member acting solely in the capacity of a Member is an agent of the Company, nor can any Member acting solely in the capacity of a Member bind the Company or execute any instrument on behalf of the Company. Accordingly, each Member shall indemnify, defend, and save harmless each other Member and the Company from and against any and all loss, cost, expense, liability or damage arising from or out of any claim based upon any action by such Member in contravention of the first sentence of this Section 7.10.

ARTICLE VIII: DISSOLUTION AND WINDING UP

8.1. *Events of dissolution.* The Company shall be dissolved upon the first to occur of the following events:

(a) The death, bankruptcy, resignation, expulsion, or dissolution of a Member, provided, however, that the remaining Members may by the Vote of a Majority of Members within 90 days of the happening of that event Vote to continue the business of the Company, in which case, the Company shall not dissolve. If the remaining Members fail to so Vote, the remaining Members shall wind up the Company. For purposes of this Paragraph (a), in determining a Majority of Members, the Percentage Interest of the Member who has died, become bankrupt, retired, resigned, been expelled, or dissolved shall not be taken into account.

(b) The expiration of the term of existence of the Company.

(c) The written agreement of all Members to dissolve the Company.

(d) The sale or other disposition of substantially all of the Company's assets.

(e) Entry of a decree of judicial dissolution.

8.2. *Winding up.* On the dissolution of the Company, the Company shall engage in no further business other than that necessary to wind up the business and affairs of the Company. The Managers who have not wrongfully dissolved the Company or, if there is no such Manager, the Members, shall wind up the affairs of the Company. The Delegates winding up the affairs of the Company shall give Notice of the commencement of winding up by mail to all known creditors and claimants against the Company whose addresses appear in the records of the Company. After paying or adequately providing for the payment of all known debts of the

Company (except debts owing to Members), the remaining assets of the Company shall be distributed or applied in the following order:

- (a) To pay the expenses of liquidation.
- (b) To the establishment of reasonable reserves by the Delegate for contingent liabilities or obligations of the Company. Upon the Delegate's determination that such reserves are no longer necessary, said reserves shall be distributed as provided in this Section 8.2.
- (c) To repay outstanding loans to Members. If there are insufficient funds to pay such loans in full, each Member shall be repaid in the ratio that the Member's loan, together with interest accrued and unpaid thereon, bears to the total of all such loans from Members, including all interest accrued and unpaid thereon. Such repayment shall first be credited to unpaid principal and the remainder shall be credited to accrued and unpaid interest.
- (d) Among the Members with Positive Capital Account Balances as provided in Article IV, Section 4.16.

8.3. *Deficits.* Each Member shall look solely to the assets of the Company for the return of the Member's investment, and if the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the investment of each Member, such Member shall have no recourse against any other Members for indemnification, contribution, or reimbursement, except as specifically provided in this Agreement.

ARTICLE IX: INDEMNIFICATION AND ARBITRATION

9.1. *Indemnification.* The Company shall have the power to indemnify any Person who was or is a party, or who is threatened to be made a party, to any Proceeding by reason of the fact that such Person was or is a Member, Manager, officer, employee, or other agent of the Company, or was or is serving at the request of the Company as a director, officer, employee, or other Agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such Person in connection with such proceeding, if such Person acted in good faith and in a manner that such Person reasonably believed to be in the best interests of the Company, and, in the case of a criminal proceeding, such Person had no reasonable cause to believe that the Person's conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner that such Person reasonably believed to be in the best interests of the Company, or that the Person had reasonable cause to believe that the Person's conduct was unlawful.

To the extent that an agent of the Company has been successful on the merits in defense of any Proceeding, or in defense of any claim, issue, or matter in any such Proceeding, the agent

shall be indemnified against expenses actually and reasonably incurred in connection with the Proceeding. In all other cases, indemnification shall be provided by the Company only if authorized in the specific case by the Managers.

"Agent," as used in this Section 9.1, shall include a trustee or other fiduciary of a plan, trust, or other entity or arrangement described in the Delaware Limited Liability Company Act.

"Proceeding," as used in this Section 9.1, means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

Expenses of each Person indemnified under this Agreement actually and reasonably incurred in connection with the defense or settlement of a proceeding may be paid by the Company in advance of the final disposition of such proceeding, as authorized by the Managers, upon receipt of an undertaking by such Person to repay such amount unless it shall ultimately be determined that such Person is entitled to be indemnified by the Company. "Expenses," as used in this Section 9.1, includes, without limitation, attorney fees and expenses of establishing a right to indemnification, if any, under this Section 9.1.

9.2. *Arbitration.* Any action to enforce or interpret this Agreement, or to resolve disputes with respect to this Agreement as between the Company and a Member, or between or among the Members, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Any party may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the matter to be resolved by arbitration. The Managers shall select the place of arbitration. The substantive law of the State of Delaware shall be applied by the arbitrator to the resolution of the dispute. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered upon any such decision in accordance with applicable law in any court having jurisdiction thereof. The arbitrator (if permitted under applicable law) or such court may issue a writ of execution to enforce the arbitrator's decision.

ARTICLE X: ATTORNEY-IN-FACT AND AGENT

10.1. *Power of attorney.* Each Member, by execution of this Agreement, irrevocably constitutes and appoints each Manager and any of them acting alone as such Member's true and lawful attorney-in-fact and agent, with full power and authority in such Member's name, place, and stead to execute, acknowledge, and deliver, and to file or record in any appropriate public office: (a) any certificate or other instrument that may be necessary, desirable, or appropriate to qualify the Company as a limited liability company or to transact business as such in any jurisdiction in which the Company conducts business; (b) any certificate or amendment to the Company's Certificate of Formation or to any certificate or other instrument that may be necessary, desirable, or appropriate to reflect an amendment approved by the Members in accordance with the provisions of this Agreement; (c) any certificates or instruments that may be necessary, desirable, or appropriate to reflect the dissolution and winding up of the Company; and (d) any certificates necessary to comply with the provisions of this Agreement. This power

of attorney will be deemed to be coupled with an interest and will survive the Transfer of the Member's Economic Interest. Notwithstanding the existence of this power of attorney, each Member agrees to join in the execution, acknowledgment, and delivery of the instruments referred to above if requested to do so by a Manager. This power of attorney is a limited power of attorney and does not authorize any Manager to act on behalf of a Member except as described in this Article X.

ARTICLE XI: GENERAL PROVISIONS

11.1. *Entire agreement; amendment.* This Agreement constitutes the whole and entire agreement of the parties with respect to the subject matter of this Agreement, and it shall not be modified or amended in any respect except by a written instrument executed by all the parties. This Agreement replaces and supersedes all prior written and oral agreements by and among the Members and Managers or any of them.

11.2. *Counterpart executions.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.3. *Governing law; severability.* This Agreement shall be construed and enforced in accordance with the internal laws of the State of Delaware. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

11.4. *Benefit.* This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

11.5. *Number and gender.* Whenever used in this Agreement, the singular shall include the plural and the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

11.6. *Further assurances.* The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties.

11.7. *Member's other business.* Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Members in the carrying on of their own respective businesses or activities.

11.8. *Agent.* Except as provided in this Agreement, no provision of this Agreement shall be construed to constitute a Member, in the Member's capacity as such, the agent of any other Member.

11.9. *Authority to contract.* Each Member represents and warrants to the other Members that the Member has the capacity and authority to enter into this Agreement.

11.10. *Titles and headings.* The article, section, and paragraph titles and headings contained in this Agreement are inserted as matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

11.11. *Amendment.* This Agreement may be altered, amended, or repealed only by a writing signed by all of the Members.

11.12. *Time of the essence.* Time is of the essence of every provision of this Agreement that specifies a time for performance.

11.13. *No third party beneficiary intended.* This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement on the day and year first above written.

Member
CM Tel Co. Ltd.

By: H. Meyer

Its: Manager

EXHIBIT C

MANAGERIAL AND TECHNICAL RESOURCES

RESUMES OF MANAGEMENT

HAU TUNG YING

Manager and Chairman of the Board

Mr. Hau is a Manager and the Chairman of the Board of CM Tel (USA) LLC. Mr. Hau is also Chairman of the Board and Co-CEO of China Motion International Telecom Limited, a publicly traded company of which CM Tel (USA) LLC is a wholly-owned indirect subsidiary. As Chairman of each company, Mr. Hau is mainly responsible for strategic planning, corporate policies, and general oversight of operations. Mr. Hau has more than twenty-five years of work experience in the telecom industry, including over ten years in the Guangzhou Telecommunications Bureau and, from 1985 to 1989, as the Director and General Manager of Shenda Telephone Company Limited, a joint venture between Cable & Wireless plc and the Shenzhen Municipal Government. Mr. Hau holds a Bachelor of Science degree in Physics from Zhong Shan University.

HU TIEJUN

Manager, President & CEO

Mr. Hu is a Manager and the President and Chief Executive Officer of CM Tel (USA) LLC. In that position, Mr. Hu is mainly responsible for oversight of technical development and, together with Mr. Hau, for strategic planning, corporate policies, and general oversight of operations. Mr. Hu has more than twenty years of experience in computer systems and data communication networking. Mr. Hu holds a Bachelor of Science degree in Physics from Zhong Shan University.

LI BIN

Chief Operating Officer

Mr. Li is the Chief Operation Officer of ChinaMotion NetCom Ltd. which is a wholly-owned subsidiary of China Motion Telecom International Ltd (CMTI), a Hong Kong-based telecommunications company dually listed in Singapore (CMTE) and Hong Kong (989). He has over twelve years experience in telecommunication industry. Riding on established international backbone networks, ChinaMotion NetCom Ltd. is penetrating the international telecommunication markets through a point of presence ("POP") strategy. Business establishments have been set up in various strategic locations such as Hong Kong, Taipei, Manila, Los Angeles and Singapore. Mr. Li has held various senior management positions in CMTI since 1998. Prior to joining CMTI, he worked in China Telecom Guangdong Branch and Hong Kong University of Science and Technology (HKUST).

Mr. Li graduated from Huazhong University of Science and Technology, China in 1991. He obtained his M. Phil. Degree in 1996 from the department of Electrical and Electronic Engineering, HKUST and is expected to receive his Ph.D. from HKUST in the near future. He has been a Member of IEEE since 1996, and has published numerous telecommunications-related research papers for international conferences and journals.

SEAN LUO

General Manager

Mr. Sean Luo is the General Manager of CM Tel (USA) LLC. In that position, he is primarily responsible for managing the day-to-day operations of CM Tel (USA) LLC. For nine years prior to that, Mr. Luo served as Deputy General Manager of the Data division of China Telecom's Guang Dong Branch, where his responsibilities included operation and management. Mr. Luo holds a Bachelor of Science degree in Electrical Engineering from China Southern Industrial University and a Master of Science degree in Management Policy from the State University of New York.

CHRISTOPHER J. LAURO
Sales and Marketing Manager

Mr. Lauro is the Sales and Marketing Manager of CM Tel (USA) LLC. In that position, Mr. Lauro is responsible for planning, implementing and supervising sales and marketing for CM Tel (USA) LLC. For two years prior to joining CM Tel (USA) LLC, Mr. Lauro served as Director of Purchasing and Logistics and Director of Marketing for China Motion Telecom International Limited, where his responsibilities included management and oversight of marketing strategy, retail product purchases, information technology management systems, and distribution requirement planning. Mr. Lauro also served for three years as Business Development Manager for Allied Pickfords International, Inc., the world's largest transportation company specializing in the logistics and shipment of personal household goods, where he managed the company's sales and marketing efforts. Mr. Lauro also served as a department head in charge of sales for US China Industrial Exchange Corp., a NASDAQ listed company (CHDX) engaged in distribution of heavy industry and medical equipment to governmental agencies. For three years prior to that, Mr. Lauro worked as a Sales Representative of Access Medical Equipment Group, which specialized in the purchase and resale of used diagnostic medical equipment. Mr. Lauro holds a Bachelor of Arts degree in Philosophy from State University of New York at Binghamton, and a Certificate in Chinese Language Studies from Fudan University.

ROBERTO M. LEON
Senior Technical Manager – Engineering

Mr. Roberto Leon is the Technical Manager of CM Tel (USA) LLC. In that position, Mr. Leon is responsible for the day-to-day technical operations of the company, including Network Operations, Provisioning and Infrastructure/Engineering. Prior to joining CM Tel (USA) LLC, Mr. Leon was the National Director of Network Planning/Engineering for Eureka Broadband, a nationwide Building Local Exchange Carrier (BLEC). In this capacity, he designed and rolled out a nationwide network in six metropolitan cities. Mr. Leon brings to CM Tel (USA) LLC over twelve years of systems and network engineering experience. Mr. Leon has held management and leadership positions with Fortune 500 companies such as Motorola, SPS and Western Digital, as well as Senior Network Engineering positions with Tier-1 Internet providers such as Epoch Internet. Mr. Leon holds a Bachelor of Science degree in Advanced Computer Engineering from the University of California at Irvine.

JANE WU
Project Director

Ms. Jane Wu is the Project Director of CM Tel (USA) LLC. In that position, Ms. Wu is responsible for planning and implementing business development initiatives for CM Tel (USA) LLC. Prior to assuming this position, Ms. Wu spent six years in engineering and development

management positions with Apple Computer (Asia). For the two years prior to that, Ms. Wu also served as Project Manager with Multacom.com. Ms. Wu holds a Bachelor of Science degree in *Electrical Engineering* from *Beijing Industrial University*, and a *Masters of Business Administration* with an emphasis on *Information Technology Management* from *American HL University*.

WONG KAWAI
Chief Financial Officer

Ms. Wong is the Chief Financial Officer of CM Tel (USA) LLC and its parent, ChinaMotion NetCom Ltd., and is responsible for the overall supervision of the companies' finance and accounting functions. Ms. Wong holds a Bachelor of Business Administration degree and is an associate member of the Hong Kong Society of Accountants and fellow member of the Association of Chartered Certified Accountants. She joined China Motion in 2000. Ms. Wong has over 8 years of finance and accounting experience in various public accounting, advisory services and listed companies.

ZHOU MIN
Secretary

Ms. Zhou is the Secretary of CM Tel (USA) LLC. Prior to her position as Secretary, Ms. Zhou served as the Department Manager of CM Tel's Financial and Accounting division and as Senior Manager in the Finance Department of ChinaMotion NetCom Ltd. In those capacities, she compiled finance policies for the entire company and supervised the implementation of those policies. In addition, she oversaw the preparation of the company's annual fiscal budget and supervised the implementation of the budget. Her other duties included analyzing financial reports and business performance, reporting to the Board of Directors on various financial matters, and advising and coordinating the financial activities of ChinaMotion NetCom's various subsidiaries. Ms. Zhou holds an MBA from Royal Roads University in Canada and a B.D. in economics from China Sichuan University.

ERIC FISHMAN
Assistant Secretary

Mr. Fishman is an Assistant Secretary for CM Tel (USA) LLC and also serves as outside legal counsel for the company. A partner at Holland & Knight LLP in Washington, Mr. Fishman practices telecommunications and general business law. His concentrations within the field of telecommunications are in wireless telecommunications, local exchange telephony, domestic and international long distance service, Internet telephony and high technology.

Mr. Fishman's clients are engaged internationally and domestically in every major sector of the telecommunications industry. They include local telephone companies, domestic and international carriers (U.S. and foreign based), providers of wireless services, Internet access and service providers, and equipment manufacturers. Mr. Fishman also represents many non-telecommunications service providers, including investment institutions and large commercial and residential real estate owners. Mr. Fishman provides legal advice and representation on their behalf on matters of corporation and general business law as well as state, federal, and international issues of regulatory law governing telecommunications and information services.

Mr. Fishman began his legal career at the Federal Communications Commission as an attorney advisor with the Office of General Counsel. During his tenure at the FCC, he advised the Commission on broadcast, cellular, and common carrier adjudicatory matters and represented the Commission before the U.S. Court of Appeals.

Mr. Fishman is a member of the District of Columbia Bar, the New York and Virginia Bars, and the Federal Communications Bar Association. In addition to his career as an attorney, Mr. Fishman is an instructor at the John Hopkins University School of Continuing Studies, where he teaches courses in Domestic and International Telecommunications Policy and Regulation.

A frequent speaker at industry meetings and conferences, Mr. Fishman has appeared on panels of the ASCENT and various other trade associations. Mr. Fishman has also authored numerous articles on telecommunications law matters for industry publications.

Mr. Fishman graduated with a B.A. degree in American history from the University of Chicago and received his Juris Doctor from Columbia Law School. Mr. Fishman also holds a doctorate in American history from Columbia University.

ADAM RITTER

Assistant Secretary

Mr. Ritter is a senior associate at Holland & Knight LLP in Los Angeles, California and serves as an Assistant Secretary to CM Tel (USA) LLC. His main practice areas are international business and corporate law, mergers and acquisitions, corporate finance, high-tech and emerging growth company, and cross-border transaction practices. Mr. Ritter serves both domestic and foreign clients, utilizing his Spanish and Mandarin Chinese language capacities as appropriate. Mr. Ritter represents overseas private and publicly held companies in connection with their corporate and business activities in the United States. In addition, Mr. Ritter makes time to serve as pro-bono General Counsel for the Asian Professional Exchange, as a Board member and Co-Chair of the Pacific Rim Committee for the Southern California Chinese Lawyers Association, and as Chairman of the Business School Council of the Directors Roundtable. Mr. Ritter also recently served as Vice President - Pacific Rim of the Asian Business League.

Mr. Ritter earned a BA degree from the University of California, Berkeley in 1988; a Master's degree in Business Administration from the Anderson Graduate School of Management of the University of California at Los Angeles in 1994; and a JD degree from the University of California at Los Angeles School of Law in 1994 where he was active with the *Pacific Basin Law Journal* as a member and editor 1990-1991, 1992-1994.